

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL MELVIN, DANIEL FARRELLY, BRION MILLIGAN, MARK PALMA, ROBERT BANNAN, JESUS CRUZ, STEVEN HARTZELL, JOSEPH FOX	: : : : : : : : : :	CIVIL ACTION
v.	:	NO. 21-3209
CITY OF PHILADELPHIA	: :	

ORDER

AND NOW, this 29th day of July 2022, upon considering Defendant's Motion to dismiss (ECF Doc. No. 14), Plaintiffs' Response (ECF Doc. No. 18), Defendant's Reply (ECF Doc. No. 22), following oral argument during which the parties agreed to defer decision on the First Amendment issue at this stage mindful of the appeal in *Fenico v. City of Philadelphia* (3d Cir. No. 22-1326), and for reasons in the accompanying Memorandum, it is **ORDERED** Defendant's Motion (ECF Doc. No. 14) is **GRANTED in part** and **DENIED in part**:

1. We **deny** Defendant's motion to dismiss the First Amendment claim today only to allow further analysis after our Court of Appeals' final Order in *Fenico v. City of Philadelphia* which both parties agree address the same factual issues and nothing in this Order should be construed as a finding Plaintiffs have stated a First Amendment claim until further analysis;

2. Defendant's counsel (serving as the City's lead counsel in the *Fenico* appeal as well) shall file a Federal Rule of Appellate Procedure 28 and Local Appellate Rule 28.1(a)(2) Notice in the Court of Appeals no later than **August 8, 2022** advising the Court of the existence of this case involving the same First Amendment issue by other Philadelphia police officers against the City;

3. We **grant** Defendant's motion to **dismiss** Plaintiffs' Second Amendment claim as withdrawn;

4. We **grant** Defendant's motion to **dismiss** Plaintiffs' claims under the Pennsylvania Constitution without prejudice to specifically plead claims of declaratory relief consistent with Rule 11;

5. We **grant** Defendant's motion to **dismiss** Plaintiffs' Fourteenth Amendment vagueness challenge **with prejudice** for lack of standing;

6. We **grant** Defendant's motion to **dismiss** Plaintiffs' Fourteenth Amendment "as applied" challenge and equal protection claims without prejudice;

7. We **grant** Defendant's motion to **dismiss** Plaintiffs' due process claims without prejudice; and,

8. Plaintiffs are granted leave to file an amended Complaint no later than **August 19, 2022** to plead claims not dismissed with prejudice.



KEARNEY, J.